

D. L. H. asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Sessions' denial "with prejudice" of Mr. H.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. H. injured his back while working for Jelco-Jacobsen Construction on November 30, 1976. During 1981, the Commission ordered Jelco-Jacobsen and its insurance carrier, Pacific Insurance Company, to pay permanent partial disability compensation and medical benefits to Mr. H.. Pacific Insurance Company did, in fact, pay such benefits to Mr. H..

On January 23, 2004, Mr. H. filed another application for workers' compensation benefits against Jelco-Jacobsen, this time claiming permanent total disability compensation on the alleged grounds he was no longer able to work due to consequences of the 1976 work injury.

Subsequent proceedings on Mr. H.'s permanent total disability claim were complicated by problems in identifying the correct respondents, summarized as follows:

- Even though the Commission's 1981 order was directed against both Jelco-Jacobsen **and** Pacific Insurance Company, Mr. H. did not name Pacific Insurance as a respondent to his permanent total disability claim.
- Later, Mr. H. did identify Pacific Insurance as Jelco-Jacobsen's insurance carrier and, on July 21, 2004, the Adjudication Division included Pacific Insurance Company as a respondent.
- The Adjudication Division also joined several other insurance carriers as respondents. During December 2004, all parties stipulated that these additional carriers should be dismissed from the proceeding.
- The Division joined the Employers' Reinsurance Fund ("ERF") as a respondent, in light of the ERF's possible liability under the Act as in effect at the time of the 1976 accident.
- The Division joined the Uninsured Employers' Fund as a respondent in the belief that Jelco-Jacobsen was uninsured and insolvent and, therefore, unable to pay benefits that might be awarded to Mr. H..
- The Uninsured Employer's Fund asked to be dismissed as a respondent on the grounds that, because Jelco-Jacobsen was insured by Pacific Insurance Company, the Uninsured Employers' Fund was not liable for Mr. H.'s benefits. Mr. H. did not object to the Uninsured Employers' Fund's motion and Judge Sessions granted the motion on February 10, 2005.
- Despite the fact that Judge Sessions dismissed the Uninsured Employers' Fund because Jelco-Jacobsen was insured by Pacific Insurance, the Division then removed Pacific Insurance as a respondent to Mr. H.'s claim and did not notify Pacific Insurance of further proceedings.

On September 6, 2005, the Adjudication Division scheduled Mr. H.'s claim for a formal evidentiary hearing to be held on January 18, 2006. No notice of this hearing was mailed to either Jelco-Jacobsen or Pacific Insurance. Notice was mailed to Mr. H. and the ERF.

On January 13, 2006, Mr. H. asked that the hearing be rescheduled to allow proper service of notice on Jelco-Jacobsen and Pacific Insurance Company. Judge Sessions denied the request for continuance, stating that "[t]he matter has been pending for some time and the case needs to be moved in process."

At the hearing on January 18, 2006, Mr. H. renewed his request for a continuance, which request was denied. He then attempted to withdraw his claim, which request was also denied. Thereafter, Mr. H. advised Judge Sessions that he would not submit any evidence in support of his claim. Judge Sessions dismissed the claim as to the ERF "with prejudice," but dismissed the claim "without prejudice as it pertains to other appropriate parties."

On February 13, 2006, Mr. H. filed a motion for review of Judge Sessions' decision, in which he argued that: 1) he had an unconditional right to withdraw his application at any time prior to the actual hearing; 2) the Commission's continuing jurisdiction over workers' compensation claims precludes the Commission from dismissing a claim "with prejudice"; 3) in any event, Judge Sessions' order lacks adequate findings to support dismissal of Mr. H.'s claim with prejudice; and 4) Mr. H.'s claim was not barred by the statute of limitations.

On March 7, 2006, Judge Sessions issued an amended decision that added some detail to his original decision. Judge Sessions also modified his order to dismiss Mr. H.'s application "with prejudice" as to all parties.

On March 21, 2006, Mr. H. asked the Appeals Board to strike Judge Sessions' amended decision. Mr. H. argued that Judge Sessions lacked jurisdiction to issue an amended order after Mr. H. had filed a motion for review of the original order. According to Mr. H., once the motion for review was filed, jurisdiction vested exclusively with the Appeals Board, and Judge Sessions lacked authority to exercise any further authority in the matter. Alternatively, Mr. H. argues that Judge Sessions erred in dismissing Mr. H.'s claim against Jelco and Pacific Insurance.

DISCUSSION AND CONCLUSIONS OF LAW

In considering the complicated chain of events described above, the Appeals Board notes a fundamental contradiction in the manner Mr. H.'s claim was decided. On one hand, Judge Sessions dismissed the Uninsured Employers' Fund as a respondent because Jelco-Jacobsen had insurance with Pacific Insurance. But on the other hand, Mr. H.'s claim was allowed to proceed to hearing without notice to either Jelco-Jacobsen or Pacific Insurance. If Jelco-Jacobsen is, in fact, insured by Pacific Insurance, then that company must be included as a respondent in these proceedings. If Jelco-Jacobsen is not insured and is insolvent, then the Uninsured Employers' Fund must be joined as a respondent so that its statutory liability can be determined.

In light of the foregoing, the Appeals Board concludes that Mr. H.'s claim was not in a posture that allowed the evidentiary hearing of January 18, 2006, to proceed. Under such unusual conditions, Mr. H.'s request to withdraw his application should have been granted, and is now

granted by the Appeals Board. Having reached this decision, the Appeals Board finds it unnecessary to address the other ancillary issues raised by the parties.

ORDER

For the reasons stated herein, the Appeals Board sets aside Judge Sessions' orders and grants Mr. H.'s request to withdraw his application for hearing. It is so ordered.

Dated this 28th day of April, 2006.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch